

## **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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5 IN RE: TERRORIST :  
6 ATTACKS ON : 03-MDL-1570  
7 SEPTEMBER 11, 2001 : (GBD) (SN)

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9 - - -

10 Friday, October 4, 2019

11 - - -

12 THIS TRANSCRIPT CONTAINS  
13 CONFIDENTIAL MATERIAL

14 - - -

15 Videotaped deposition of JUDGE ALAN  
16 FINE, taken pursuant to notice, was held at the  
17 law offices of Jones Day, 600 Brickell Avenue,  
18 Miami, Florida, beginning at 9:54 a.m., on the  
19 above date, before Lisa V. Feissner, RDR, CRR,  
20 Notary Public.

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22 - - -

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1 and... and we were told that was the guy who  
2 had all the information.

3 Q. "We" being who, sir?

4 A. Me.

5 MR. GOLDMAN: Marking another  
6 document for identification. I don't  
7 know if this previously was marked.  
8 This is a State Department briefing.

9 (Exhibit Fine-270 marked for  
10 identification and attached to the  
11 transcript.)

12 BY MR. GOLDMAN:

13 Q. And this is a LexisNexis printout,  
14 Section: State Department Briefing; headline,  
15 State Department Regular Briefing; Briefer:  
16 James Foley; July 8th, 1999.

17 Is that the briefing that you were  
18 referring to?

19 A. Yes, it is.

20 Q. And when you finally reached out to  
21 the person you were directed to make  
22 communications with, did you have a  
23 conversation or conversations with that  
24 individual?

1 A. Yes.

2 Q. Was that by telephone or  
3 electronically?

4 A. Telephone.

5 Q. And what, if anything, did that  
6 individual tell you?

7 A. He said that we wouldn't find  
8 anything in the name of Osama bin Laden and  
9 that it would not be in any international wire  
10 transfers, that it was either in domestic wire  
11 transfers or withdrawals from accounts, through  
12 other names.

13 Q. Did he give you the other names?

14 A. He did not.

15 Q. Did you ask him for the other  
16 names?

17 A. Yes. That was the purpose for my  
18 phone call. The bank had already done a search  
19 for any accounts, any transfers from, any  
20 transfers to Osama bin Laden with negative  
21 results, meaning there was nothing. So we were  
22 looking, what are the facts that support these  
23 allegations? And I was referred to the guy who  
24 was supposed to know, and he either didn't know

1 with Mr. Kashkett.

2 Q. And can you tell me everything that  
3 you recall about the conversation with Steve  
4 Kashkett at the U.S. State Department on July  
5 15th, 1999?

6 A. I identified myself, who I was  
7 representing, why I was calling, told him that  
8 the bank took the allegations seriously and  
9 wanted to work with the government of the  
10 United States to get this information, and if  
11 there was information to be gotten, to deal  
12 with it appropriately. He indicated that we  
13 would not likely find anything in the name of  
14 Osama bin Laden, that transactions would be --  
15 would have been done through a different  
16 name -- that's the reference to a "through  
17 cut" -- that we shouldn't be looking at  
18 international wire transfers but that it would  
19 be withdrawals, or possibly a wire transfer  
20 within the United Arab Emirates.

21 Q. And during the call, did you tell  
22 him that you had already, along with Rob  
23 Ellison, conducted some investigation into the  
24 allegations?

1 A. Yes.

2 Q. And what did you tell him in that  
3 regard?

4 A. That we -- "we," meaning Rob  
5 Ellison, had informed me that he had -- or  
6 conducted an investigation into whether or not  
7 Osama bin Laden had an account at the bank or  
8 was the sender or recipient of any wire  
9 transfer. I understood at that point any kind  
10 of wire transfer, but it may have been  
11 international wire transfers.

12 Q. Did you ask Steve Kashkett, on July  
13 15th, 1999, for any information regarding any  
14 connection between Dubai Islamic Bank and Osama  
15 bin Laden?

16 A. Yes. That was the main purpose of  
17 the phone call was to find out if he knew or  
18 was willing to give us any information to  
19 assist in our investigation of those  
20 allegations.

21 Q. And what types of information might  
22 have been helpful to you in connection with  
23 investigating the allegations?

24 A. A name of a person, a name of a

1 company, an account number, a date, in-coming  
2 wire, outgoing wire, the nature of the  
3 transaction. Really anything to get us  
4 started.

5 Q. And did Steve Kashkett, in response  
6 to your inquiries on July 15th, 1999, give you  
7 any information that the U.S. government  
8 possessed that could have been helpful?

9 A. No. I mean, he didn't give me any  
10 name, he didn't give me an account number, he  
11 didn't give me a date. The only information he  
12 gave me was that it was more likely than not a  
13 withdrawal from a bank account that they  
14 were -- they had reason to believe that it was  
15 a withdrawal from a bank account or a domestic  
16 wire transfer, meaning within the UAE.

17 Q. Did Steve Kashkett at the U.S.  
18 State Department, on July 15th, 1999, tell you  
19 any information about when the transactions  
20 that might have been under investigation  
21 occurred?

22 A. Not at all.

23 Q. And how did you leave it with  
24 Mr. Kashkett at the end of the phone call on

1 July 15th, 1999?

2 A. Here I am, here's my number, here's  
3 my telefax number. If you learn of anything or  
4 become willing to share anything, please call  
5 me.

6 Q. And at any time during your  
7 engagement for Dubai Islamic Bank, did anyone  
8 at the U.S. government ever call you with any  
9 concerns about any accounts at Dubai Islamic  
10 Bank related to Osama bin Laden or terrorism  
11 generally?

12 A. No.

13 (Exhibit Fine-276 marked for  
14 identification and attached to the  
15 transcript.)

16 BY MR. COTTREAU:

17 Q. Let me show you what's been marked  
18 as Exhibit 276. Ask you to take a look at this  
19 document and tell me whether you recognize it.

20 A. I do.

21 Q. What is Exhibit 276?

22 A. It's a photocopy of a letter that I  
23 co-authored on behalf of Dubai Islamic Bank to  
24 The New York Times.



1 Q. Did you send this letter at Exhibit  
2 276 to The New York Times?

3 A. Yes.

4 Q. Can you read the first sentence of  
5 the second paragraph of your letter?

6 A. DIB has never dealt directly with  
7 Osama bin Laden, and has no knowledge or reason  
8 to believe that anyone acting on bin Laden's  
9 behalf had been laundering his money through  
10 DIB.

11 Q. When you wrote and sent that  
12 statement to The New York Times, did you  
13 believe it to be true?

14 A. Yes.

15 Q. At the end of Exhibit 276, you say,  
16 Accordingly, we demand that you print a  
17 retraction of the portions of the article  
18 listed above.

19 Did The New York Times retract its  
20 statements?

21 A. No.

22 Q. Do you think they took your request  
23 for a retraction seriously?

24 MR. GOLDMAN: Objection.

1 MR. COTTREAU: Let me rephrase.

2 Q. Did you consider suing The New York  
3 Times after it refused to print a retraction?

4 A. Yes.

5 Q. Did you make a recommendation as to  
6 whether to sue or not?

7 A. Probably. I know I discussed it  
8 with my colleagues in the law firm and with  
9 Bill Richey and with Rob Ellison. I probably  
10 did make a recommendation. But it might -- it  
11 was probably not a strong recommendation. It  
12 was more, here are the advantages, here are the  
13 disadvantages.

14 Q. And what was the thinking of you  
15 and your fellow lawyers on the case with  
16 respect to whether to sue The New York Times?

17 A. The New York Times' in-house  
18 attorney responded to our letter laying out a  
19 series of potential defenses or what he  
20 believed were actual defenses and why the  
21 newspaper was not obligated to print a  
22 retraction, and it also gave some of the bases  
23 for why a defamation action might not be  
24 successful.

1                   So we discussed what a defamation  
2   lawsuit would look like and how it would be  
3   drafted, what claims would be made. We  
4   anticipated what the defenses might be, and we  
5   evaluated the advantages and disadvantages of  
6   proceeding, both in -- even if we were  
7   successful, what the potential consequences  
8   would be for the bank, and if we were  
9   unsuccessful.

10               Q.   And what did the bank decide to do  
11   prior to 9/11 with respect to suing The New  
12   York Times?

13               A.   Not to proceed with a lawsuit.

14               Q.   Did you disagree with that  
15   conclusion?

16               A.   No. No, I didn't disagree. I  
17   thought it was the right of the client to  
18   decide whether or not the risk -- the  
19   reputational risk would be enhanced by the  
20   lawsuit, which was their primary concern; that  
21   just by bringing this back up into the public  
22   and anticipating that if not The New York  
23   Times, then other members of the press would  
24   publicize the existence of the lawsuit, and

1     what people would remember would be the name of  
2     the bank and Osama bin Laden and terrorist  
3     financing, even if the bank legally was able to  
4     clear its name.

5             Q.     After the decision not to sue The  
6     New York Times, did you ever have any other  
7     discussion with Rob Ellison about the U.S.  
8     government contacting Dubai Islamic Bank  
9     seeking its cooperation?

10            A.     Yes.

11            Q.     What do you recall?

12            A.     Sometime in 2001, Rob passed along  
13     that there had been information provided by the  
14     United States government, either directly to  
15     DIB or more likely through the Central Bank,  
16     which led to the bank's closing of two  
17     accounts.

18            Q.     Do you know what those accounts  
19     were?

20            A.     No, I don't.

21            Q.     Do you know whether those accounts  
22     related in any way to Osama bin Laden?

23            A.     No.

24            Q.     Did Rob Ellison ever tell you that

1 the Dubai Islamic Bank was reluctant to  
2 cooperate with the U.S. government?

3 A. No. To the contrary.

4 Q. What did he tell you in that  
5 regard?

6 A. That the bank wanted to know if  
7 there were any facts to support the allegations  
8 that were made, starting with the newspaper  
9 articles; that we opened lines of communication  
10 through the U.S. lawyers, me, through the bank;  
11 and that the message that they were giving to  
12 the Central Bank and to the Ruler's office in  
13 Dubai was, we want to cooperate. If there's  
14 any account that's open that shouldn't be open,  
15 tell us about it, tell us how to find it. If  
16 you know what it is, tell us the account. If  
17 you have any information that could lead us to  
18 helping find it, please give us that  
19 information.

20 Q. Other than the U.S. government  
21 approaching either directly or indirectly Dubai  
22 Islamic Bank to close two accounts, are you  
23 aware of any other request by the U.S.  
24 government to Dubai Islamic Bank?

1 A. No.

2 Q. At any time during your  
3 representation of Dubai Islamic Bank, did you  
4 become aware of bank accounts in Osama bin  
5 Laden's name or that were otherwise connected  
6 to Osama bin Laden?

7 A. No.

8 (Exhibit Fine-277 marked for  
9 identification and attached to the  
10 transcript.)

11 BY MR. COTTREAU:

12 Q. Let me show you what's been marked  
13 as Exhibit 277. It's a document Bates stamped  
14 DIB\_003187 through 3189. Ask you to take a  
15 look at it and let me know whether you  
16 recognize this document.

17 MR. GOLDMAN: What number was this  
18 again?

19 MR. COTTREAU: 277.

20 A. I do.

21 Q. What is Exhibit 277?

22 A. It is a draft -- it's a photocopy  
23 of a draft of a letter to Mr. Liptak, who was  
24 the attorney who responded on behalf of the